

***United States Court of Appeals
for the Second Circuit***



**PETITION FOR
REHEARING
EN BANC**

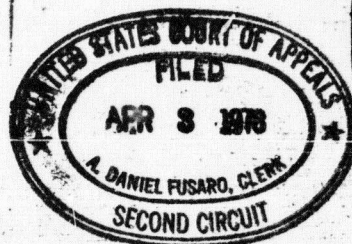
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

--VS--

SEBASTIAN INTERSIMONE,
Defendant-Appellant

DOCKET NO. 77-1085



PETITION FOR REHEARING AND/OR
PETITION FOR REHEARING EN BANC

COMES NOW, SEBASTIAN INTERSIMONE, acting in his own behalf, pro-
se, respectfully requests that this Honorable Court grant him this
Petition For Rehearing, and for good cause shown, states:

(1) On February 23, 1978, the Appellant received thru the
institution mail, an order from this Honorable Court affirming the
matter in the above styled cause. The Order shows a decision date of
January 27, 1978, however as the attached Affidavit shows, the Appellant
did not timely receive this decision until some twenty-six days after
the decision of this Court.

The petitioner-Appellant makes this request for a Rehearing,
pursuant to Federal Rules of Appellate Procedures, Rule 40 (a), in
order to "eliminate an ambiguity" or "doubtfulness" in it's decision.

Such signification seems doubtful and uncertain to persons of com-
petent skill and knowledge to understand them, to which the Appellant
has clearly suffered prejudice, which has caused the Appellant mental
distress and concern.

The Appellant further requests that he be granted a Rehearing En
Banc, pursuant to Federal Rules Of Appellate Procedures, Rule 35 (a), to
which this Court Of Appeals has the power to hear and decide cases in
banc, pursuant to 28 U. S. C. Sec. 46 (c). The appellant prays that the
Honorable Court deems this cause exceptionally important, in that, the
Appellant has made sufficient allegations which, if true, entitle him
to relief. These allegations are specific and detailed, in both his
Original Brief, as well as the supplemental and rebuttal briefs he has

presented to this Honorable Court, and are not vague or conclusory.

Since controverted issues of material fact have been raised in this appeal, which cannot be conclusively determined on the record, a Rehearing En Banc must be conducted, at which findings of fact and conclusions of law must be made.

Federal Rules Of Appellate Procedures, Rule 35 (a) is the appropriate avenue of relief, and review is not foreclosed by the actions of the present panel.

For these reasons, Appellant respectfully requests that this Honorable Court grant him a Rehearing or in the alternative grant him a Rehearing En Banc, said hearing be held on the factual and legal issues raised on his appeal, and that the appellant be ^{allowed} ~~allowed~~ to retain counsel to represent him on Oral Arguments pertaining to these issues.

Respectfully Submitted,

Sebastian Intersimone
Sebastian Intersimone
PMB 04522-158
Atlanta, Georgia 30315

ATTESTATION

I HEREBY ATTEST, under the penalty of perjury, that a True and correct copy of Appellant's Petition for Rehearing and/or Petition For Rehearing En Banc, has been sent by U. S. Mail to the Office Of The U. S. Attorney, for the ^{Southern} ~~Eastern~~ District Of New York, on this the 6 day of March, 1978.

Certified mail
R R R

Sebastian Intersimone
Sebastian Intersimone

STATE OF GEORGIA) ss
COUNTY OF FULTON)

A F F I D A V I T

I, SEBASTIAN INTERSIMONE, first being duly sworn by law, depose and say:

- (1) That On February 23, 1978, I received from the mail Officer here at the U. S. Penitentiary, a copy of a decision from the United States Court Of Appeals, for the Second Circuit, dated January 27, 1978, in reference to the case of the affiant entitled United States Of America -v- Sebastian Intersimone, Docket Number 77-1085, affirming this appeal.
- (2) That this unnecessary ^{delay} ^{by} has thwarted the Appellant to file a petition For Rehearing and/or Petition For Rehearing En Banc in the required 14 days allotted by the Court.
- (3) That because of this unnecessary mail delay, the appellant feels that he is entitled to redress of his ^s issues before a En Banc Panel of this Court, and that the time limit for Rehearing be waived in this cause, because of the delay in receiving this notice.

*Certified Mail
RRR*

Sworn to and subscribed
before me on this the 6
day of March, 1978.

SO SAYETH THE AFFIANT,

Sebastian Intersimone
Sebastian Intersimone, Affiant

Parale Officer